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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 981

LORING J. WHITESIDE,
Petitioner,

vs.

STATE OF CONNECTICUT,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

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Italicized words appearing in quotations indicate emphasis added by petitioner.

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vs.

STATE OF CONNECTICUT

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

Petitioner, Loring J. Whiteside, respectfully prays that a writ of certiorari issue to review the final judgment of the Supreme Court of Errors of the State of Connecticut, denying without comment a Petition for Writ of Error Coram Nobis or Review in Equity, seeking the revocation of a judgment of said Court announced on April 4, 1961 finding no error in the judgment of guilty on 4 out of 23 counts of criminal libel, whereby a sentence of fine, imprisonment and 2 years probation was imposed by the Court of Common Pleas of New Haven County.

OPINIONS BELOW

No opinion nor memorandum of decision accompanied the denial of the Petition for coram nobis. Official citation is not yet available. Temporary citation is *State* v. *Whiteside*, 152 Conn. (26 Conn. L.J. No. 22, p. 11) Atlantic Reporter citation for the order is 204 A.2d 627. The opinion of the Supreme Court of Errors sought to be revoked by the Petition is reported in 148 Conn. 208-218, and is set forth in the appendix annexed hereto at page A 36.

JURISDICTION

The judgment of the Court below denying the Petition for coram nobis was entered on November 19, 1964. A timely petition for reargument was filed on November 27, 1964 and denied without comment on December 15, 1964. The jurisdiction of this Court is invoked under 28 U.S.C. 1257 (3) and Rule 22 (3) of this Court.

QUESTIONS PRESENTED

1. Was the petitioner deprived of his right to due process of law and the equal protection of the law, and of his right against double jeopardy, under the 5th and 14th amendments, by a criminal libel conviction on 4 counts in which every important statement considered libelous by the State had been pronounced non-libelous by the jury from 4 to 11 times in 19 not guilty counts, and where the State had offered no evidence whatsoever that anything published was libelous? (Raised in Par. 15 (g) page A 10 & Par. 2 in motion for reargument page A 29)

2. Did the State Supreme Court deprive the petitioner of his right to trial by jury under the 6th amendment, and the benefits to which he was entitled from the jury verdict by substituting therefor 3 mistakes of fact of major proportions? (Raised in Par. 15 (g) page A 10 & Par. 2 in motion for rearg. page A 29)

3. Did the State Supreme Court by failing to recognize and to rectify its own 3 mistakes of fact, undisputed and

uncontestablle by the State, disclose a prejudice against the petitioner which deprived him of due process of law and the equal protection of the law? (Raised in Par. 5, Rearg. page A 30-31)

4. Did each of the constitutional violations cited above render null and void and of no effect the judgment of the State Supreme Court of Errors on December 15, 1964 denying the coram nobis petition, and its previous decision in 148 Conn. 208?

CONSTITUTIONAL PROVISIONS

AMENDMENT V.

*** nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; *** nor shall he be deprived of life, liberty or property without due process of law;

AMENDMENT VI.

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed.

AMENDMENT XIV.

*** No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

The case is so fully covered in the paragraphs of the coram nobis petition set forth in the appendix herewith, that little remains to be said in the petition proper. On March 28, 1959 the petitioner was sentenced to 20 days imprisonment, $500. fine and 2 years probation on 4

counts of criminal libel and discharged on 19 counts, after a jury trial lasting 6 weeks, in which he was represented by very competent counsel, who likewise represented him on an appeal of the 4 guilty counts to the State Supreme Court of Errors, where the judgment was confirmed. How the Supreme Court could have succumbed to so many major mistakes is a mystery which may never be solved, but the facts are painstakingly disclosed in the coram nobis petition, and the failure of both State prosecutor and Supreme Court Justices to question the slightest point therein, is very significant. There is little doubt that some of the trial judge's findings as printed in the Record influenced the 5 Supreme Court Justices to become enmeshed in their 3 big mistakes. Some of these findings are commented upon in Petition #837 filed in this Court on February 15, 1963 on pages 5-15, 9 copies of which are being loaned the Court for convenience of reference if desired.

TRIAL COURT FINDING INFLATES STATE EVIDENCE

When the jury in March 1959 could not understand why the State had utterly failed to introduce any evidence to prove any published statement was libelous, it asked for further instructions on that point. Six paragraphs (Nos. 260-265, A 34) indicate the exchange between judge and jury. It will be noticed that the judge makes no pretence that the State did introduce any evidence, because the jury was right there and knew there was none offered by the State. He simply told the jury the State had no responsibility to introduce any evidence. But ten months later on January 5, 1960 when he filed his finding, the "First" thing he said on page 18 (A 34) was "Upon the trial of this case to the jury the State offered evidence to prove *** the following facts", when there wasn't a shred of evidence so offered. What the trial judge did not dare say to the jury because they knew better, he did say to the Supreme Court in his finding, and succeeded in misleading all five of the Justices into their 3 big mistakes. Had the Justices kept their eyes on the jury verdict instead of the finding, they could have averted their mistakes.

Another strange departure of the trial judge was to drag in to the appellate record a finding on every one of the 19 not guilty counts upon which the petitioner had been discharged so that they were immaterial and could only serve to confuse the High Court. When the trial judge in his finding (Nos. 12-57, A 34-35) treated all 19 of the not guilty counts as if they, too, were all guilty, (See EXHIBIT K all 23 introductory sheets printed in red) he led the High Court to a still greater degree of inflating State evidence beyond all reality, and minimizing the petitioner's evidence to the vanishing point, which resulted in creating in the minds of the 5 Supreme Court Justices an impression which was exactly the extreme opposite of the truth.

FEDERAL COURT PROCEEDINGS

The history of the case includes a petition to this Court for certiorari on the two constitutional points — (1) Denial of a bill of particulars by trial court whereby petitioner was deprived of his right to be informed of the nature and cause of the accusation against him, and (2) Prejudice exhibited by the five Justices of the State Supreme Court which cropped out in numerous places in their published opinion and elsewhere (Cert. Pet. #837, pp. 15-25), which deprived him of due process of law. Certiorari was denied on October 9, 1961 as reported in 368 U.S. 830. The following day a habeas corpus proceeding was filed in the U.S. District Court where Judge Anderson indicated from the bench that he thought there had been a violation of the right to a bill of particulars, but the failure of the highest State Court to pass upon the merits of either question, prevented the federal courts from passing upon them until State remedies had been exhausted. An appeal to the U.S. Court of Appeals upheld Judge Anderson on the same grounds, as reported in 309 F. 2d 322; and this Court refused certiorari a second time on April 15, 1963, as reported in 372 U.S. 966.

STATE COURT PROCEEDINGS IN HABEAS CORPUS

Two days later, on April 17, 1963, the petitioner filed a habeas corpus proceeding in the State Superior Court

at Bridgeport, and on April 18, 1963 filed a motion in the trial Court of Common Pleas for a stay of execution pending exhaustion of state remedies, copy of which will be found in the appendix. (A 32-33) The motion for stay was completely ignored, the clerk cannot remember and has no record showing that it ever was placed before a judge until after he and the prosecutor had compelled the petitioner to serve 21 days in the custody of two sheriffs and had coerced him into payment of the fine and imposed probation restraints as set forth in Par. 15 and its 7 subdivisions in the coram nobis petition. (A 9-10) That habeas corpus proceeding was based upon the violation of five federal and state constitutional rights, practically all of which were subject to documentary proof readily verified. The State offered no evidence at the hearing, made no written or oral objection to the issuance of the writ, and yet the judge denied the writ without opinion of any kind and refused even to honor Judge Anderson's favorable comment on the constitutional point respecting the denial of a bill of particulars. That adverse decision is now on appeal to the State Supreme Court of Errors and the petitioner's brief is due on April 15, 1965.

THE STATE JUDICIARY FACES A DILEMMA

A perusal of various excerpts from the 19 not guilty counts (A 15 to A 28) discloses what makes this particular case a very difficult one for the State Judiciary to handle. The three top men in the organized vice underworld of the State of Connecticut are named, and two of them are members of the bar, whose word is law in organized gambling, lotteries, baseball pools, prostitution and dope, with all the power known to be illegally appropriated and exercised by such hidden gangsters not only in Connecticut, but all over the nation. This is the first time the names of the top men in Connecticut have ever been openly published, and the accuracy and audacity of the Grapevine newspaper reports at first paralyzed and terrified those judges and lawyers who knew the newspaper reports were true, and who are obliged to do everything in their power to aid and protect the king-pins

of vice, who provide such extensive income for so many lawyers. The jury verdict of not guilty on 19 counts embraces every important statement of the publisher which is regarded as libelous by the State in all 23 counts. The facts set forth in the coram nobis petition lay bare the skeleton behind this case and show it up for the farce it has been from its inception on October 27, 1958 down to the present moment.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

I. TOTAL ABSENCE OF STATE EVIDENCE BARS CONVICTION

The conviction in this case will be recognized at once as having been based on an inconsistent verdict, not the usual kind of *one guilty count* being balanced by another *not guilty count*, but one in which there are from 4 to 11 not guilty counts over against each guilty count, so that the weight of the jury verdict is overwhelmingly in favor of complete exoneration of the petitioner. In *Dunn* vs. *U.S.*, 284 U.S. 390 (1932) this Court has spoken clearly on this subject and held that "consistency in the verdict is not necessary". The underlying reason for that conclusion was that the guilt of the accused had been satisfactorily and completely proved by competent and conclusive evidence, so that it was the jury's disposition through lenity, which they had no right to exercise, which produced the anomalous verdict. In the libel case, however, the underlying facts disclosed in the petition for coram nobis show that there was no proof whatever offered by the State that any statement in any one of the 23 counts was libelous. This left a complete vacuum in the State's case, with nothing whatsoever upon which 4 guilty counts could be based, and eliminates the Dunn case as providing any authority to sustain the libel verdict of guilty on the 4 counts. The failure of the State to contest any of the facts in, or any point of law pertaining to, the coram nobis petition is the best evidence that the facts set forth therein are incontrovertible, and have been assembled with meticulous accuracy.

No case has been found in any jurisdiction where there has been such an utter absence of all State evidence in a criminal prosecution. The nearest case in point which has been found is *Peru* vs. *U.S.*, 4 F. 2d 881,884 (1925-8th Circ.) where the court said:

> "A conviction of crime *with no evidence to support it whatever* presents upon the whole record such a palpable and manifest error as warrants the appellate court in considering it, even if there has been no assignment of such error, as is contended here."

II. ACQUITTAL ON ONE COUNT BARS CONVICTION ON ANOTHER WHEN BOTH CHARGE THE SAME CRIME

The libel case information contained numerous duplications in the 19 not guilty counts of alleged libels in the 4 guilty counts. There was no bill of particulars from which this could be ascertained until ten months after the trial when the trial judge with the very competent and imaginative help of the prosecutor, fashioned in his findings what amounted to a superb bill of particulars, which enabled the analysis appearing on pages A 15 to A 28 to be compiled. No other or different offence than criminal libel occurs in any count of the information. This duplication renders it relatively easy to throw out the conviction on all 4 guilty counts on the additional ground found in *Hughes* vs. *U.S.*, 95 F. 2d 538 (1938-5th Circ.) where the court said:

> "It may be conceded that if the *same offence* is charged in two counts of an indictment, or in two indictments consolidated for trial, acquittal on one count will bar conviction on the other."

The case of *Speiller* vs. *U.S.*, 31 F. 2d 682,684 (1929-3rd Circ.) bears out this same viewpoint when the court said:

> "Where there is an acquittal on one count of an indictment and a conviction on another count, *charging the same crime,* the verdict of conviction

> will not be allowed to stand unless supported by evidence other than that on which the acquittal was based. (3 cases cited)" *** When the liberty of a citizen is at stake, a jury will not be permitted to make a plaything of a verdict and blow hot and cold at the same time."

The court in *U.S.* vs. *Ball,* 163 U.S. 662,671 (1896) said:

> "The verdict of acquittal was final and could not be reviewed, on error or otherwise, without putting him *twice in jeopardy,* and thereby violating the Constitution. *** In this country a verdict of acquittal, although not followed by any judgment, is a bar to subsequent prosecution for the same offence.

III. DOUBLE JEOPARDY

The chart beginning on page A 15 showing that every important statement in the 4 guilty counts regarded as libelous by the State was to be found from 4 to 11 times in the 19 not guilty counts, renders the petitioner immune to being ever prosecuted again for criminal libel on any statement in *all 23 counts.* The 5th amendment ban on double jeopardy as well as the res adjudicata doctrine protects him. In this respect the *Dunn* case supra, decided 33 years ago, appears to overrule the res adjudicata doctrine as applied to inconsistent verdict cases, but it is reasserted as a controlling factor in the case of *Sealfon* vs. *U.S.,* 332 U.S. 575 (1949). Alexander N. Bickel, in 63 Harvard Law Review 649, presents a view that the *Sealfon* case appears to overrule the *Dunn* case sub silentio. Three other federal courts have seen fit to murmur against the *Dunn* decision, as for instance in the *Speiller* case supra as shown by the quotation therefrom; likewise in *U.S.* vs. *Keadt,* 31 Fed. Sup. 546,547 (1940) where the judge said:"

> "I strongly feel that the jury should not blow hot and cold in passing upon the rights of a defendant in a criminal indictment."

Then in *U.S.* vs. *Maybury,* 274 F 2d, 899,890 (1960-2nd Circ.) the court said:

> "A majority of us reject the government's claim that the rule laid down by the Court in *Stickler* vs. *U.S.,* 7 Fed. 2d 59, and by the Supreme Court in *Dunn* vs. *U.S.* ** upholding jury verdicts in criminal cases despite inconsistency as between counts, applies when a criminal case has been tried to a judge, find that, on the facts here, the acquittal on the first count was inconsistent with the conviction on the 2nd, and, therefore, reverse the conviction."

Fortified by the jury acquittal on every important statement considered as libelous by the State in all 23 counts, the petitioner is in an impregnable position as to the contents of all 23 newspapers. And as long as the 4 guilty counts continue to be regarded as "guilty" in the judgments of the State courts, it places the State judiciary in a bad light before the public and detracts from the respect and reverence which it should enjoy. Courts are driven to declare convictions null and void which are inconsistent with acquittals on identical charges Only thereby can they preserve their own integrity and dignity in the enforcement of their own judgments. They would be laughed to scorn and subject to ridicule to do otherwise. Numerous cases in the early years of this century based their inconsistent verdict decisions on this principle.

IV. THE JURY VERDICT IGNORED

By selecting for the 19 not guilty counts only those which contained every important statement in the 4 guilty counts regarded as libelous by the State, the jurors actually exonerated the petitioner 100%. Their verdict on the 19 not guilty counts established the fact that there was nothing libelous or defamatory in all 23 newspapers. In line 13 of page 213 of its decision in 148 Conn., (A 41) the Supreme Court declared "the publications clearly disclosed such scurrilous, abusive and offensive matter" as to justify a jury to conclude they were made from improper motives. In 6 other places it referred to

the publications indiscriminately as being *"defamatory"* or *"false* and *defamatory,"* 3 times on page 211, lines 17, 23 and 33; once on page 212, line 22; once on page 213, line 41; and once on page 214, line 18. Everyone one of these 7 repetitive statements overruled the jury verdict contrary to the petitioner's constitutional right under the 6th amendment and rendered the judgment of the Supreme Court null and void. To adjudicate something as being *defamatory* after a jury has rendered a verdict declaring it is *not defamatory,* is a startling violation of a constitutional right. Only by taking their eyes off the verdict and glueing them upon the trial judge's findings, could the 5 Supreme Court Justices have fallen into the 3 major mistakes recited in the coram nobis petition, which points them out with sufficient clarity to need no further comment here, except to say that the 47 findings of the trial judge listed in assignment of error #8 on that appeal, would all have been stricken out (Par. 12 (c) (A 7), had the total absence of State evidence been known and recognized by the 5 Justices.

V. OBVIOUS PREJUDICE DENIES DUE PROCESS

However much there might be some suspicion of prejudice lingering in the minds of at least 3 of the Justices sitting last November on the high State Court, there could be no certainty until after their decision was announced on Nov. 19, 1964. When the State failed to question either facts or law involved; when cold blooded documentary evidence was available to prove or disprove the mistakes of facts set forth in the petition which so cruelly denied justice to the petitioner, and no one raised a finger either to question or to object, and the Court offered no explanation or justification for its adverse decision, there just is no other conclusion possible than that the same prejudice shown to be present in 1960 and 1961, still possesses the minds and souls of all the Justices who participated in the Nov. 19th decision, and could be first raised only in the motion for reargument to be found in the appendix (A 29). This denial of due process under both the 5th and 14th amendments is the outstanding breach of constitutional rights in this entire 6 year battle

against such violations, and serves to render the April 4, 1961 decision of the State Supreme Court null and void and of no effect.

As to the inclination of this Court to recognize the merit of the writ of coram nobis and to review state court action if the petition makes an adequate showing of merit, reference is made to page A 11 where the cases of *Bronson* vs. *Schulten*, 104 U.S. 410 and *Taylor* vs. *Alabama*, 335 U.S. 252 and other state cases are presented as authority and precedent for the granting of certiorari in such a case as this where the highest state court has decided several federal questions by evasion in a manner not in accord with applicable decisions of this Court, and has so far departed from the accepted and usual course of judicial proceedings, as to call for an exercise of this Court's power of supervision.

CONCLUSION

No more gentle approach to the injustices and constitutional violations present in this particular prosecution can be made than through the medium of these 3 mistakes of fact. They are readily discernible, and in good grace might well be used as a weapon to discredit the competence of the participating Justices in the State Supreme Court, or as ground for criminal charges, removal from office or even disbarment. The truth about the case is now down to grass roots. The petitioner considers it of more importance in the closing of this case that the best interests of the judiciary and bar of the State be considered than his own, save for the simple reimbursement for monies expended and fair and moderate reimbursement for the time he has had to spend for defense of a malicious prosecution as set forth in the claims made at the end of the coram nobis petition. (A 13-14) When time permits he expects to press for adequate restitution to the various victims reported in his newspapers, and he would expect help from the judiciary in counseling restitution from those whose duty it is to provide it.

For all of the reasons hereinbefore listed it is the earnest prayer of the petitioner that this Court may find it

possible to answer all four of the Constitutional questions presented in the affirmative and that a writ of certiorari to the Supreme Court of Errors in Connecticut may issue to review its judgment denying petitioner's application for a writ of error coram nobis or review in equity.

Respectfully submitted,

March 12, 1965

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APPENDIX

#4952

SUPREME COURT OF ERRORS

State of Connecticut vs. *Loring J. Whiteside*

October 26, 1964

MOTION FOR WRIT OF ERROR CORAM NOBIS OR REVIEW IN EQUITY

The petitioner, Loring J. Whiteside of Woodbridge, Connecticut, respectfully represents:

1. On March 28, 1959 he appealed to this Court from a judgment of the Court of Common Pleas of New Haven County pronounced on that same date, wherein he was convicted of criminal libel on 4 counts, Nos 7, 9, 12 & 17.

2. Judgment of this Court was announced on April 4, 1961 affirming said judgment of the Court of Common Pleas, after no error was found on the appeal, as reported in 148 Conn. 208-218.

3. The opinion of this Court, as written by Justice Mellitz with the unanimous concurrence of his four associates including Chief Justice Baldwin, indicates that the Court labored under *3 major mistakes of fact*, upon which the 5 Justices based their decision, which if known to them at the time would have enabled them to avoid rendering an unjust judgment, as will hereinafter appear, and to avoid confirming the imposition of a sentence, which was actually null and void and of no effect.

4. The 3 mistakes of fact are:

   (a) That the defendant presented at the trial no evidence of truth and good faith. (p. 213, line 17-20. See also (1) & (2) in second paragraph of the syllabus on page 208)

   (b) That the State presented evidence to prove the libelous nature of the 23 newspaper reports. (p. 213, line 23; p. 214, line 22-27; line 33-34; p. 215, line 1-6; p. 212, last par.)

   (c) That the defendant failed to question the sufficiency of the evidence to warrant a conviction on count 12. (p. 214, par. 2, line 26-28)

5. Mistake of fact (a) opened up the way to the erroneous conclusion that statements in all 23 of the newspapers were *false and defamatory*, scurrilous and abusive (p. 211, lines 17, 23, 33; p. 212, line 22; p. 213, line 14, 41; p. 214, line 18); and that *malice could be implied* from the mere publication of what was mistakenly regarded as defamatory. (p. 211, line 16-18, 32-33; p. 213, line 13-24)

6. The magnitude of mistakes of fact (a) & (b) is best revealed by an inspection of the 5 bound volumes now in the custody of the clerk of this Court in New Haven, containing a total of 1201 pages of the Transcript of testimony at the trial, which fall into 4 logical divisions as follows:

	No. of pages	
(a)	5	(1-5) containing master indexes of all 42 witnesses (4 State & 38 defendant) & 56 exhibits, all with page references.
(b)	22	(6-17 & 1114-1123) devoted to State comment and material to which reference will be made in Paragraph 7 to follow.
(c)	1096	(18-1113) devoted to testimony of 38 witnesses presented by the *defendant*.
(d)	78	(1124-1201) given over to Judge's charge to jury, motions, exceptions, verdict and sentence.
	1201	— TOTAL PAGES

Every particle of the testimony presented by the defendant covering 1096 pages was in an effort to convince the jury of the absolute truth of every statement set forth in the 23 newspapers, and thereby to establish the good faith and honorable purpose behind the publication which was inaugurated for the sole purpose of obtaining restitution for various victims of dishonest lawyers and even judges. Five of the victims were put on the witness stand and told their stories to the jury accompanied by 31 documents, letters and photographs as exhibits to back up their oral testimony. Ruthless cross examination by the

State failed to shake the straightforward truth told by the victims. The first of defendant's witnesses took the stand on the morning of February 26, 1959 and the other 37 continued in a steady stream through the first 3 weeks of March, concluding on March 19.

7. The complete dearth of State evidence becomes agonizingly apparent when the 22 pages of the trial Transcript devoted to State material, and referred to in the preceding paragraph, are examined. Here is the use to which those 22 pages were put:

No. of pages	
2	(6-7) Opening remarks of prosecutor George R. Tiernan under Practice Rule 335 (now #478) in the last paragraph of which he stated to the jury: "the State will have to prove that the matter was offensive, indecent or abusive to *at least one person in each count* in order to sustain the proof required in this State to prove the defendant guilty ** and ** that there were *libelous statements made*."
9	(8-16) Testimony of 3 State witnesses as to the prominent positions held by 16 alleged libelees, indicating that all 16 are living persons, but not a word about their having been libeled. Nothing but their names, their high positions, and that they were still living and not dead. Attorney Bernard P. Kopkind gave the testimony as to 14 of them including himself, and the other 2 were Spencer S. Hoyt and Lisle Longbotham, each of whom spoke for himself, giving his occupation and impressive positions held.
1	(17) Tiernan and Judge Wall both announce publicly that the name of attorney Joseph Morse was striken from the information as an alleged libelee.
10	(1114-1123) The State presented attorney Alfonse C. Fasano as its 4th and last witness, and its only witness on the *libelous issue*, in

an attempt to disprove some of the material printed on the 4 pages of the newspaper in count 11, but giving particular attention to statements appearing on page 2 of that paper. His testimony had no effect whatsoever in altering what was published in the paper which the jury later confirmed by declaring count 11 non-libelous.

22 — TOTAL STATE PAGES in transcript.

It should be stated in this connection that the better part of 3 days, February 20, 24 & 25, were consumed by prosecutor Tiernan in reading to the jury the total contents of all 23 newspapers, immediately following the brief testimony of Kopkind-Hoyt-Longbotham that 16 highly placed men were still alive. As he concluded the reading Tiernan said (p. 16):

> "May I express my thanks for your attention to the rather long and strenuous intense reading. I am sorry it took so long. With that, the *State rests.*"

And the State continued to rest without ever making good on Tiernan's pledge to the jury in his opening remarks above quoted (a) that the State would have to prove *that there were libelous statements made.*

8. The sharp contrast between the abundance of evidence brought forward by the defendant and the non-existence of any State evidence as to guilt was so pronounced, that when the defendant's counsel was making his closing address to the jury and commenting upon the State's failure to present its most important witness, attorney Kopkind, prosecutor Tiernan rose in a rage and shouted at defendant's counsel "YOU'RE A LIAR". This startled the whole court room including the Judge who immediately summoned a reporter to make notes of answers to his questions, but he made no move to reprimand the prosecutor for what is quite generally regarded as a contempt of court when in the Judge's presence.

The glaring contrast is further high-lighted when it is considered that the only issue before the jury was whether the statements in the 23 newspapers were true or libelous. To prove their *truth* the defendant presented 38 witnesses

and testimony covering 1096 pages. To prove them *libelous* the State presented only one witness and no more than 10 pages of testimony. In terms of percentages, if the State's 10 pages are considered 100%, then the defendant presented 10,860% more evidence than the State. All 10 pages of the State evidence were discredited and knocked out by the jurors when they designated count 11 as NOT GUILTY of any libel. This left the state with no productive evidence whatsoever. The defendant's evidence so impressed the jurors that 11 of them battled nearly 14 hours to declare the publisher not guilty on all 23 counts, but when they could not persuade the 12th juror to vote with them without complying with her demand for 4 guilty counts, regardless of which ones they were, the 11 labored diligently to pick out for the 4 guilty counts, only those which contained statements repeated from 4 to 11 times in the 19 not guilty counts. Thereby the 11 jurors succeeded in avoiding a mistrial and the loss of 6 weeks times for all concerned, and at the same time circumvented the lone stubborn juror, and registered clearly their belief that the publisher was innocent of any untruth or libel as to any statement he had made in all 23 newspapers. This is readily perceived by reference to the 14 pages, A-5 to A-18, annexed hereto and marked "EXHIBIT A". By failing to appeal any one or all of the 19 not guilty counts, or to move for judgment on them notwithstanding the verdict, the State signified its complete satisfaction with the verdict, which, while appearing to pronounce him guilty on 4 counts, actually exonerated the defendant 100% as to every important statement he had made in all 23 newspapers.

9. Not only did the State fail to make the slightest attempt in 22 out of 23 counts to fulfill its responsibility as to proof admitted in Par. 7 (a) above, but it also failed to make good on such insignificant proof as it did offer on trivial statements in count 11; and the jury completed the annihilation of the entire prosecution, from beginning to end, by selecting for the 4 guilty counts demanded by the stubborn juror, only those containing statements which had already been pronounced non-libelous from 4 to 11 times in the 19 not guilty counts.

The passing of time has in no way improved the State's case, for at the habeas corpus hearing on April 25, 1963 in Bridgeport Superior Court, prosecutor Tiernan testified under oath that after reading the 23 newspapers to the jury *"I believe after identifying them* (the 16 prominent men)*as living people, I rested."* (Transcript p. 34, last par.)

10. The 23 newspapers were most all written in such a way as to supply proof within themselves of the statements in each one, so that they were, in large measure, powerful evidence of their own contents and helped in no small way to convince the jury of the publisher's veracity and good faith. Especially was this true after 19 of the newspapers were pronounced non-libelous by the jury; and thereafter they became fully qualified to be added to the mountain of other truth and good faith evidence, both oral and written, contained in the 1096 pages of the trial transcript referred to in par. 6 above, and the 32 exhibits presented at the trial by the defendant.

11. Mistake of fact (c), that the defendant failed to question the sufficiency of the evidence to warrant a conviction on count 12, served to lead the 5 Justices along another road to the erroneous conclusion that there was no basis for disturbing the guilty verdict on count 12 (p. 214, end of par. 2) This mistake may perhaps be charged to an accidental oversight, apt to occur when there is such a vast volume of material to be digested. However, all 5 Justices did overlook how the defendant actually did make a vigorous attack on the jury verdict with respect to all 4 guilty counts — 7, 9 & 17 — as well as #12, which will be found printed in the Record at the bottom of page 9 & dated March 25, 1959, in which he sought to have the *verdict on all 4 counts set aside as being contrary to the evidence.* The denial of this motion on March 28th was set up as an assignment of error #2 on page 93 of the printed Record, and urged as the parting shot of emphasis in the last paragraph of his brief on page 315½, Vol. A-394, Conn. Supreme Court Records & Briefs, where it was urged that neither the law *nor the evidence* support the verdict of guilty on any one of the 4 guilty counts.

12. These 3 mistakes of fact, especially the first two, were of such a fundamental nature as to discolor and throw out of focus the whole case on appeal and to make all Grapevine publications appear to the 5 Justices as irresponsible yellow journalism instead of an orderly, truthful presentation of carefully gathered facts for the laudable purpose of obtaining restitution for 5 or more victims of high-up fraud. These 3 mistakes of fact led the 5 Justices into erroneous conclusions such as the following:

(a) That the 23 newspapers contained *false and defamatory statements.* (See the 7 references in Par. 5 above to pages 211, 212, 213 & 214 of the Opinion) The jury found none.

(b) That there was ample evidence before the jury to support a finding of malice. (See references in Par. 5 above) The jury found none.

(c) That there was no lack of State evidence to justify the retention of some 47 findings listed in assignment of errors #8 (Record, p. 94) The High Court gives every appearance of being fair when it says at the top of page 215: "If there is no evidence affording a reasonable basis for a claim of proof, the claim may be stricken out." Only the mistake of fact in thinking there was an abundance of State evidence, prevented the Court from *striking out every one of those 47 findings.*

(d) That the State had presented a "sufficiency of ** evidence to warrant a conviction on count 12." (P. 214, Par. 2) Count 12 newspaper was just as completely destitute of any State evidence as was every other newspaper in all 23 counts. The complete blackout of all State evidence upon the defamatory issue, left nothing whatsoever for either the trial or appellate courts upon which to base a judgment of guilty or a sentence of guilt on any one of the 4 guilty counts, either 7, 9, 12 Or 17, which leaves the judgment and sentence of both courts null and void and of no effect. The evi-

dence presented at the trial may be epitomized as *A MOUNTAIN OF TRUTH FOR THE DEFENDANT* vs. *zero.*

13. No one of these 3 major mistakes of fact could have been foreseen by the defendant or his attorney and called to the attention of the Court so as to have been corrected before the publication of the Court's opinion; nor were any of them issues which could have been raised at the trial or at the oral argument on the appeal, other than had already been done in the defendant's brief as stated in Paragraph 11, supra.

14. As a rule the common law writ of error coram nobis is available to correct mistakes of fact in the *trial court* even after affirmation by an appellate court (See 145 A.L.R. 8i8; *Buckler* vs. *State*, 161 So. 683,684); but, as trial Judg Wall has pointed out to the publisher in a letter under date of August 17, 1964, the big mistake of fact developing after the jury verdict but before pronouncement of the sentence, was the lack of knowledge by both Judge and defendant that every important statement considered by the State to be libelous in the 4 guilty counts had already been pronounced non-libelous from 4 to 11 times by the jury in the 19 not guilty counts, and that *mistake of fact* cannot be remedied by the trial court as long as the decision of the Supreme Court remains on the books upholding the conviction on count 12 irrespective of the verdict on the not guilty counts. It is quite clear from paragraph 2 on page 214 of the opinion that this was one of the erroneous consequences of the 3 mistakes of fact enumerated in this petition; so if the State courts are going to be able to handle this matter without the intervention of the Federal courts, it becomes essential for the State Supreme Court to act on its own 3 mistakes of fact before any correction can be expected from the Court of Common Pleas. State and Federal courts throughout the nation appear to be unanimous in holding that any such judgment and sentence rendered under the circumstances of this case is null and void in view of the well established doctrine of res adjudicata, particularly when combined with the total failure of the State to provide any proof of libel. Even the United States Supreme Court

after making a laudable effort to prevent persons of proven guilt from taking advantage of an inconsistent jury verdict in *Dunn* vs. *U.S.*, 284 U.S. 390 (1932), found they got into trouble with the res adjudicata doctrine. So they virtually overruled the *Dunn* case in *Sealfon* vs. *U.S.*, 332 U.S. 575 (1949), as is ably pointed out by Alexander Bickel in 63 Harvard Law R. 649.

15. The one big mistake of fact in the trial court and the 3 mistakes of fact occurring in this Court have resulted in a void judgment and sentence which has aggrieved the petitioner and subjected him to grave injustice in the following ways:

(a) It has subjected him to indefensible imprisonment for 21 days, one more day than even Judge Wall himself imposed.

(b) He has been coerced into payment of an illegal fine of $500. On May 1, 1963 in order to escape continuous imprisonment for 250, or possibly 166, days additional.

(c) He has been subjected to probation restraints illegally administered which do not expire until May 4, 1965, and cannot be terminated earlier as a favor to him without permanently waiving his rights to exoneration, if such favor should be accepted.

(d) All of these illegal impositions have been enforced against his vigorous protest and in spite of his two motions for a stay pending exhaustion of State remedies and, if need be, federal intervention. And neither stay has yet been granted although clearly within the power and propriety of the trial court.

(e) It has subjected the petitioner to such a large loss of business that it virtually has deprived him of his livelihood in doing collection work at which he has been engaged for nearly 35 years. His clientele consists largely of sensitive and discriminating professional men who cannot afford to give their business to any collection agent with a record of convictions and imprisonment, which the general

public regard as a sure sign of guilt, and subjects his clients to criticism, if he is continued as their collection agent.

(f) It has required of the petitioner outlays of thousands of dollars in court fees and expenses, transcripts, counsel fees, printing costs and numerous incidental expenses connected therewith, and for over 3 years he has been obliged to give over the major portion of his own time to law research, consultation, preparation of material for court hearings in both state and federal courts with travel expenses and other disbursements which inevitably accompany the effort to shake off illegal, persistent and shameful abuse of process and power.

(g) By the aforesaid behavior of State officials the petitioner's Federal and State Constitutional rights under both Federal and State Constitutional provisions to due process of law and the equal protection of the law have been repeatedly violated, as have also his Federal and State rights against double jeopardy, after the jury declared him not guilty of any libel from 4 to 11 times on all important statements made by him in the 4 guilty count newspapers.

16. The writ of error coram nobis is a writ applied for at a subsequent term of the same court which rendered the judgment, to have the judgment revoked for errors of fact, but not of law, and not negligently withheld from the court by the petitioner. Although more frequently employed to revoke trial court judgments, *"on principle it would seem that the writ should lie in an appellate court to its judgments in the original proceedings."* Lester B. Orfield, "The Writ of Error Coram Nobis in Civil Practice," 20 Va. Law Rev. 423,424 (1934)

The Court in *Dows* vs. *Harper*, 6 Ohio 518,521 (1834) says:

"The Supreme Court being our highest judicial tribunal, no other court can examine its proceedings, and if the writ of error coram nobis resident is re-

> fused in our practice, wrongs resulting from the errors in fact of this court, would remain without redress. The writ is allowed."
>
> See also to same effect *Teller* vs. *Wetherall*, 6 Mich. 46, 49-51 (1858)

At least two petitions for writs of error coram nobis have been filed in the Connecticut Supreme Court of Errors to revoke its opinions for mistakes of fact: one on September 1, 1955 and the other on September 18, 1956, in the two cases of *State* vs. *Wojculewicz*, 143 Conn. 118 and *Greenberg* vs. *Harrison*, 143 Conn. 731. In neither case did the court find it necessary to decide the merits of the procedure, but both cases were granted a hearing, and the Court in the former case at page 123 remarked "So far as we are aware this is the first time in the long history of this court that its judgment was vacated after the term had expired."

> In *Bronson* vs. *Schulten*, 104 U.S. 410, 416,417 (1881) the Court said:
>
> "In *Pickett's Heirs* vs. *Legerwood*, 7 Pet. 144, this court said that the same end sought by that writ (coram vobis) is now in practice generally attained by motion, sustained, if the court require it, by affidavits; and it was added, this latter mode had so far superseded the former in the British practice, that Blackstone did not even notice the writ as a remedy." *****
>
> "The question relates to the *power* of the courts and not to the mode of procedure. It is whether there exists in the court the authority to set aside, vacate and modify the final judgments after the term at which they were rendered; and this authority can neither be conferred upon nor withheld from the courts of the United States by the statutes of a State or the practice of its courts."

In *Taylor* vs. *Alabama*, 335 U.S. 252, 262 (1948) the court indicated that it recognizes the merit of the writ of coram nobis and will review State Court action if the petition makes an adequate showing of merit. It quotes

with approval a State court opinion as follows (p. 262):

> "We recognize in this State, as does the Supreme Court of Florida, that the common law writ of error coram nobis is available ** and is the appropriate remedy to be followed. ** Such application should make an adequate showing of the substantiality of the petitioner's claim to the satisfaction of the court. A mere naked allegation that a constitutional right has been invaded will not suffice. The application should make a full disclosure of the specific facts relied upon, and not merely conclusions as to the nature and effect of such facts."

17. Other pronouncements concerning the writ of coram nobis are:

> Lester B. Orfield, 20 Va. Law Review, supra, at pages indicated:
>
> "It is believed that the courts in every state grant the relief given under the writ either by virtue of decision or statute. ** The writ lies in criminal cases as well as in civil cases." (p. 427)
>
> "It does not lie as to issues which were adjudicated at the trial, or which with diligence on the part of the petitioner might have been adjudicated." (p. 428)
>
> "The application for the writ is made by petition or motion, usually supported by affidavit. Only one who is a party, or privy to the record, and who is prejudiced thereby may apply. ** Notice to the adverse party is a prerequisite, especially since the writ is in the nature of a new suit to revoke a former judgment." (p. 434)
>
> "If the pleadings result in an issue of fact, such issue, it is usually said, must be tried by a jury, though the language of some cases seems to indicate the issues are tried by the court." (p. 436)
>
> "The motion for the writ is in the nature of a petition and is a part of the record proper. Hence it is not necessary to preserve it by a bill of exceptions to require the court on appeal to review the adjudication of the trial court." (p. 437)

Other Connecticut cases recognizing the virtues and availability of the writ of coram nobis, or review in equity, to revoke judgments based on mistakes of fact are:

Jeffrey vs. *Fitch*, 46 Conn. 601 (1879)
Hurlbut vs. *Thomas*, 55 Conn. 181 (1887)
Tyler vs. *Aspinwall*, 73 Conn. 483, 496-498 (1900)
Stolman vs. *Boston Furniture Co.*, 120 Conn. 235, 242 (1935)
Jarvis vs. *Martin*, 77 Conn. 19, 21
Cicarelli vs. *Armand Co.* 6 Conn. Sup. 385 (1938)

Cases in other jurisdictions are:

Sanders vs. *State*, 85 Ind. 318 (1882)
Kelly vs. *U.S.*, 138 F. 2d 489 (1943)
Myles vs. *U.S.*, 170 F. 2d 443 (1948)
U.S. vs. *Kranz*, 86 F. Sup. 776 (1949)

18. Inasmuch as a petition of this nature is properly directed to the same Justices who pronounced the void judgment under mistake of fact, no request for the disqualification of any member of the Court as now constituted, accompanies this petition.

WHEREFORE, your petitioner prays:

1. That a writ of error coram nobis or a review in equity, or other appropriate process or order, issue to the end that the aforesaid judgment of this Court announced on April 4, 1961 may be revoked, vacated and declared null and void and of no effect by reason of the 3 mistakes of fact hereinbefore described.

2. That the case be remanded to the Court of Common Pleas with instructions to vacate its judgment and sentence on the 4 guilty counts pronounced on March 28, 1959, by reason of the mistake of fact unknown to the trial Judge or the defendant at the time of pronouncement, that the not guilty jury verdict on the 19 counts duly exonerated the defendant of any libel with respect to all statements which he had made in all 23 counts considered as important by the State but not set forth in any bill of particulars.

3. That said Common Pleas Court be instructed to hold a hearing to determine the amounts expended by the defendant in both State and Federal Courts for court fees, trial costs and disbursements, counsel fees, printing, travel costs, witness fees and all other legitimate disbursements made by the defendant in connection with his defense, together with a fair compensation for his own time consumed in acting as his own counsel in defending himself in both State and Federal Courts, and that an order be entered that the State reimburse the defendant for all such amounts so ascertained.

4. That the State be instructed to return to the defendant with interest the $500. fine paid by him on May 1, 1963 under protest when deprived of a stay for which he had made a motion properly filed and served on April 18, 1963.

5. That any issue of fact created by this petition and any further pleading resulting from it, be referred in accordance with Sec. 699 of the Practice Book.

6. Such other relief as he may be entitled to in the premises.

Loring J. Whiteside, Petitioner, pro se.

STATE OF CONNECTICUT:
: SS New Haven,
COUNTY OF NEW HAVEN: October 26, 1964

Personally appeared Loring J. Whiteside of Woodbridge and affirmed under penalty of perjury that he is the person who subscribed his name to the foregoing petition, and that the matters and facts therein set forth are true of his own knowledge and belief.

(Filed Oct. 27, 1964)
(Nov. 19, 1964 — Denied
By The Court, King, C.J.)

Ethel C. Shields
Notary Public
My Commission expires
April 1, 1967

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THE 16 ALLEGED LIBELS IN THE 4 GUILTY COUNTS SHOWING WHERE THEY MAY BE FOUND IN THE 19 NOT GUILTY COUNTS

with excerpts therefrom or a brief description

GUIDE: The alleged libels are printed in caps and listed consecutively in the order in which they appear in guilty counts 7, 9, 12 & 17. References to not guilty counts are shown in italics, thus — 1-4-*Par.* 3, meaning, Count 1, page 4 and paragraph 3.

All such references may be found in Exhibit K, where the 23 newspapers are bound in plastic cover in consecutive order with dividing sheets imprinted in red and numbered according to the COUNT number.

GUILTY COUNT 7 — FINDING 24 (Ex. D, p. 23, or Ex. K)

1. JOHN F. MONAHAN, CHIEF OF POLICE IN WEST HAVEN, WAS SUBJECT TO THE ORDERS OF ONE FRANK RUIZ, A GAMBLER AND UNDERWORLD FIGURE:

2. THAT THE CHIEF WOULD "STICK A KNIFE INTO YOU, IF YOU DON'T WATCH OUT."

As clearly appears from the quotation added by Judge Wall in Par. 2 of finding 24, these 2 assertions were made by a prostitute madam referred to as Madam X, and *not by the publisher*. His two comments were:

"One day I was telling her * * about the 100% cooperation which Chief Monahan had indicated to me in affording protection to Angelo and his family."

When Madam X made the knife sticking accusation, the publisher said:

"That I could not understand after the nice way the Chief had received me."

The publisher was defending and not accusing the Chief. The prosecutor was seeking to imply a libel by putting the madam's words into the publisher's mouth.

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3. THE ALDERMANS (SIDNEY & RALPH) "ARE SO POWERFUL THEY WOULD STOP AT NOTHING. DO YOU KNOW WHAT THAT MEANS? THEY WOULD KILL YOU."

1-4-*Par.* 3
Sydney and Ralph Alderman paid Kopkind to build an organ to extinguish rebellious souls. Its foot pedals strike terror in the hearts of those towards whom the sounds are directed.

3-3-*Line* 1
Sydney Alderman "is the owner and czar of the GREAT ORGAN built by Kopkind over the years."

3-3-*Par.* 2
Under the heading "DEATH DEATH DEATH" follows a paragraph marked "2" which elaborates on the terror and fear of death among the trusted employees of the underworld.

15-1-*Par.* 2
Near the end is said "FEAR OF DEATH is ingrained deeply into the lives of the lesser figures and holds them in check so that they dare not divulge either who they work for, where they go or whence they come."

4. SYDNEY ALDERMAN MAINTAINED A FRONT AS A LAWYER AND HIS BROTHER AS A TAILOR, AND QUIETLY BUILT UP ONE OF THE BEST MANAGED UNDERGROUNDS IN AMERICA WITH THE AID OF KOPKIND.

1-4-*Par.* 3
Sydney & Ralph Alderman paid Kopkind "for the work he did in building and perfecting the instrument. One would think that Sydney would not need a lawyer, being one himself. But that is where one would be mistaken, because although publicly listed as a lawyer, Sydney is not known as a *practicing* lawyer. That is only his 'front'."

16-3-*Par.* 3
"Sydney's front is, of course, his attorneyship, appearing on his door and in the telephone book, but *he does*

not practice law. It is very nice of the Connecticut State Bar to cooperate with Sydney to this extent. Raises the standard of the profession to a high level." (See 16-3-Par. 2 for Ralph's "front".)

22-4-*Par.* 4

"Kopkind is the KING-PIN. It is his genius * * which formed New Haven's UNDERWORLD into an almost impregnable fortress. * * Neither Sydney nor Ralph Alderman could ever have done the job Kopkind has done for them. He has earned every cent they have paid him. He has covered them up as well as himself."

22-6-*Par.* 2

Lawyer front of Sydney and tailor front of Ralph described as they build up a multi-million dollar rackets business, with Kopkind's efficient help since 1929 when he was graduated from Yale Law School.

GUILTY COUNT 9 — FINDING 28 (Ex. D, p. 24 or Ex. K)

5. THAT KOPKIND "IS PULLING SUCH CRAP AS HE PULLED WITH ANGELO IN OTHER CASES ALSO."

15-1-*Par.* 2, *Line* 5

"Kopkind * * is the *legal architect* & organizer of New Haven's UNDERGROUND, its rackets, its prostitution & other criminal activities."

16-2-*Par.* 4

The underground syndicate seems to recognize a real estate racket as entitled to its protection "same as lotteries, baseball pools, prostitution and dope." Kopkind was protecting a real estate racket in case of Angelo.

23-4-*Line* 26

"The racketeers in New Haven control not only the Board of Zoning Appeals and its decisions, but the City Court and its decisions, the Probate Court and its decisions and conduct, the department of Public Works and its policies and the DEMOCRATIC PARTY in New Haven, which has become so bold it puts up racketeers for State Senate in the 9th District and asks

the voters to place their confidence in EDDIE MARCUS, who never hesitates to play confidence games and utilize false pretences to ruin hard working men with families."

23-4-*Line* 11

"the ZONING APPEAL RACKET * * is chicken feed beside numbers, lotteries, baseball and football pools and even prostitution and narcotics."

6. THE HEAD MEN IN THE NEW HAVEN AREA OF VICE OF ALL KINDS INCLUDING GAMBLING & PROSTITUTION, ARE RALPH & SYDNEY ALDERMAN, AND KOPKIND IS THE LEGAL BRAINS AND ORGANIZER OF THE OPERATING TECHNIQUE.

6-1-*Last Par.*

Kopkind has produced a smooth running, extraordinarily efficient vice machine.

14-4-*Line* 8

"Underworld of New Haven under the very competent legal direction of Kopkind & Flynn, has been working for many years to fasten their tentacles upon the body politic." (The 2 Alderman boys exposed in line 23, same page)

15-1-*Par.* 2, *Line* 20

"Kopkind and his helpers have been putting together the most invincible shelter for vice that has ever been erected in the history of this country."

18-4-*Line* 15

"Kopkind was king-pin in the UNDERWORLD OF NEW HAVEN for vice lords, Sydney & Ralph Alderman."

18-2*S*-*Line* 9

"deep corruption in New Haven, headed up by Sydney and Ralph Alderman with Kopkind as high legal adviser and sculptor of the hidden but daily routines of thousands employed in New Haven's OWN UNDERGROUND."

22-3-*Last Par. Line* 1

"Bernard P. Kopkind is the lord high 'mucky muck' of

New Haven's vice set up."

22-4-*Par.* 3

"Kopkind is the KING-PIN. It is *his* genius, *his* brilliance, *his* demoniac possession which formed New Haven's UNDERWORLD into an almost impregnable fortress, unassailable and impervious to the most persistent attacks. Neither Sydney nor Ralph Alderman could ever have done the job Kopkind has done for them. * * He has covered them up as well as himself so that the most sophisticated men about town never dreamed that Sydney or Ralph had any connection whatsoever with vice in any form."

7. KOPKIND SUPPLIED GOON TACTICS IN HIS OWN PERSON.

3-3-*Sec.* (1), *last line*

Kopkind follows "the gangster policy if the mouse won't scare."

8-4-*Par.* 2, *last 6 lines*

Kopkind, Flynn, Sydney & Ralph "will not tolerate the slightest opposition. They do not have to. They have their *own police force.* Their own GOONS. And from what MADAM X says, they run towns, give orders to our own police, bribe New Haven mayors with mistresses, and we have had revealed right before our own eyes, how they dictate to Judge Shanley and the machinery of the Probate Court."

15-2-*Par.* 2, *Line* 3

Kopkind did "both head work and some leg work in setting up a perfectly organized vice ring."

15-3-*Line* 13

"You have some evidence of his (Kopkind's) power in what he and his gangsters have attempted to do to put me out of business."

19-4-*Sec.* 2, *Line* 6

"On the lower level he (Kopkind) is the city's most astute liar, crook and gangster and has been for 29 years.

8. "HE (SAMUEL ALDERMAN) COULD NOT HAVE TOLERATED FOR A MINUTE THE HELLISH, ROTTEN, UNDERHANDED,

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FRAUDULENT BETRAYAL OF A CLIENT AND A FATHER, WHICH KOPKIND AND FLYNN CONSIDER LEGITIMATE SPORT FOR LAWYERS TODAY."

2-1-*Par.* 1

"No firm of attorneys in the entire New Haven area, and perhaps in the State, are so well equipped to protect deceitful and fraudulent clients as the modest but powerful firm of Kopkind & Flynn. They *enjoy* the distinction, and roar and laugh at the victims as this sheriff or that sheriff is commissioned to shove small children and furniture out on the street in a perfectly legal manner, or as the bodies of compassionate persons fall in the street, exhausted from doing for nothing, save love, work which KOPKIND & FLYNN'S clients were paid to do, but didn't."

4-5-*Lines 25 and 29*

when the big bosses are ring snorted by Kopkind & Flynn, everything goes to pot. ** when KOPKIND & FLYNN snap their fingers, watch Shanley dance —"

8-3-*Last par.*

Describes how Halprin "connives with Kopkind to cheat Angelo out of $1000 so that Kopkind's cronies can seize his house and render him penniless and incapable of paying Halprin's bill." The entire page is devoted to the story of how the facts were unearthed as to how the Pouzzner firm of which Kopkind & Flynn were members, betrayed its client, Angelo Chairamonte.

15-1- *Last Par.*

"It was the Pouzzner firm that betrayed Angelo, its client, who deceived him, ** that colluded with Marcus to play Angelo for a sucker and betrayed him —" (Kopkind & Flynn both members of this firm)

18-4-*Par.* 2

This paragraph contains an excellent discussion of how Kopkind as "king-pin in the UNDERWORLD OF NEW HAVEN for vice lords Sydney and Ralph Alderman, ** owed greater allegiance to Marcus, another member of the UNDERGROUND, than he would to his own clients on the upper level."

A-11

19-2-*Last Par.*

"When Angelo hired the firm of Pouzzner, Hadden, Kopkind & Hadden to represent him, they betrayed him into the hands of Marcus"

22-4-*Par.* 2

Kopkind accepted Angelo as a client, took his money for the job "and then betrayed Angelo right into the fradulent hands of Marcus & Longbotham." "YOU HAVE A PICTURE OF THE MOST INFAMOUS BETRAYAL ANY LAWYER EVER PERPETRATED UPON A CLIENT."

GUILTY COUNT 12 — FINDING 34 (Ex. D, pp. 25-26 or Ex. K)

9. KOPKIND AND FLYNN AND THE ALDERMAN BROTHERS WERE INTRENCHED IN A VARIETY OF RACKETS.

(*Note* — The Alderman brothers are not named as libelees in Count 12, so if Judge Wall had cared to observe practice rule in Section 400 permitting only relevant facts to be set forth in findings, he would have omitted them. It is easy to see how it is hard to omit them in any racket discussion, because they have been the star clients of Kopkind and his 2 firms for well over 30 years.)

14-4-*Line* 8 *and Line* 20

"The UNDERWORLD of New Haven under the very competent legal direction of the firm of KOPKIND & FLYNN has been working for many years so to fasten their tentacles upon the body politic in and around New Haven, so that nothing short of the DAY OF JUDGMENT can suffice to dislodge them. ** A variety of hoodlums have been threatening me over the phone, various hatchet men have been inspecting our premises, threats with and without compound profanity have been hurled at me by anonymous gangsters, all because I persist in exposing Kopkind and Flynn and the two Alderman boys and their stooges."

8-4-*Par.* 2

See this quote under LIBEL 7. Also see all 7 quotes under LIBEL 6.

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10. THEY (KOPKIND & FLYNN & THE ALDERMANS) SPILL OVER INTO REAL ESTATE RACKETS AND STRIP DECENT CITIZENS OF THEIR MONEY;

8-4-*Line* 6

Jack Halprin in "collusion with Kopkind to fleece Angelo and Barbara and their children." Same paragraph at bottom of preceding page explains how Halprin "connives with Kopkind to cheat Angelo out of $1000 so that Kopkind's cronies can seize his house and render him penniless and incapable of paying Halprin's bill."

15-1-*Par.* 2

See this quote under LIBEL 5.

16-2-*Par.* 4

See this quote under LIBEL 5.

16-4-*Par.* 2 & 3

Real estate rackets developed to a high degree of efficiency in New Haven. "Kopkind and his satellites comprise the worst and most dangerous single menace in the city. * * *He simply must be clipped.* AND THE ALDERMAN BOYS." Edward L. Marcus who had charge of baseball and football pool betting among Yale students while he was in the Law School, was entitled to protection by the syndicate, "but the extension of that protection to (his) *real estate rackets* is something else again." The underground must have added that as a new department.

19-2-*Entire Page*

The Waldner Real Estate Racket described. "It never occurred to me that Waldner might have any connection with New Haven's own underground, headed by Sydney & Ralph Alderman, with lawyer Kopkind as chief counsel, until I noticed in the Register that he was being represented by attorney Albert Evans, then of the firm of Evans & Markle, regarded quite generally as top counsel within the range of vision. Kopkind, and possibly Bill Hadden, are concealed in the stratosphere, wholly outside the range of normal vision, as are both Sydney and Ralph themselves."

Real estate racketeers, Longbotham & Marcus, described in their swindling operations, under protection of Kopkind and his law firm.

23-4-*Line* 11

See this quote under LIBEL 5.

11. KOPKIND AND FLYNN MAKE MONKEYS OUT OF JUDGES AND LIARS AND CONFEDERATES OUT OF JUDGE AND CLERK OF PROBATE;

1-3-*Par.* 2

"the practice of law to both Kopkind & Flynn has become 'a mere brawl for hire, or a system of legalized plunder, where craft and not conscience is the rule, and where falsehood and not truth is the means by which to gain his ends.'"

1-3-*Par.* 4

"Our form of government is in danger with gangster attorneys such as this telling Judges what to do and wielding such power that they are helpless to do otherwise. Judge Shanley's job would not be worth a nickel if he failed to do the bidding of Kopkind & Flynn, and Hoyt might as well pack up and go west, if he failed to respond to the hidden dictator."

2-1-*Par.* 3

"I think you may find a chuckle at the spectacle of the ORGANIST (Kopkind), with Flynn, his capable understudy, being caught with his two JUDGES in their own trap."

3-1-*Last Line*

"Predicament in which KOPKIND & FLYNN had left Judge Shanley.

4-4-*Par.* 2

Kopkind & Flynn and Judge Hoyt ignored "every duty any one of them had to investigate or make amends. * * "because they thought Hoyt could and would block any discovery of the facts which would be be essential for any prosecution."

4-4-*Par.* 3, *Line* 14

Judge Hoyt "has been telling me a string of lies month after month to protect Peggy and Alec, clients of

Kopkind & Flynn, the mighty lords of hidden activities."

4-5-*Par.* 1

Judge Hoyt "was a do-nothing blockade of value to Kopkind & Flynn ** but worse than zero to the hospital and the other creditors."

4-5-*Par.* 2, *Lines* 3, 9, 20-22

Judge "Shanley did not even take the trouble to back up Hoyt's lie about being appointed administrator in early May. ** Klebanoff's assertion was also a lie. (He was clerk of probate) ** he (Shanley) ought to maintain an open mind so that the Hospital might get a square deal. But when Kopkind & Flynn snap their fingers, watch Shanley dance."

8-4-*Par.* 2, *Last* 2 *Lines*

"we have had revealed right before our own eyes, how they (Kopkind, Flynn, Sydney & Ralph) dictate to Judge Shanley and the machinery of the Probate Court."

19-4-*Par.* 3, *Line* 14

Issues 12 & 15 (Counts 1 & 4) disclose in simple and easily understood language just how both (Judges) Shanley & Hoyt exposed themselves and lied to cover up illegalities of the underground. They were caught hard *in their own trap."*

12. "THERE IS, I BELIEVE, A 5 YEAR STATUTE OF LIMITATIONS IN THIS STATE ON THE CRIMES OF PERJURY, BLACKMAIL AND INTIMIDATION, ALL OF WHICH WERE CLEARLY COMMITTED BY THAT PEER OF PEERS, ATTORNEY KOPKIND."

1-3-*Lines* 6 & 10

"Kopkind was the principal offender. He was accused of committing perjury on the witness stand to cover up his connection with a fraudulent person against whom he was engaged to give Angelo protection. * * (He) Used blackmail to defeat his former client's case."

2-1-*Last Par., Lines* 1 & 2

"it was in testimony before him (Judge J. Howard

Roberts) on July 7, 1953 that Bernie Kopkind committed perjury under oath."

2-2-*Lines* 1 & 2

"distinguished attorneys such as Kopkind and his cohorts stand up and lie under oath, or in violation of their oath."

4-2*S*-*Par.* 3

"One of New Haven's top flight trial lawyers * * knew of Kopkind's perjury. He heard it himself. He knew how Kopkind rooked his own client. He carefully appraised the whole situation and concluded to his own complete satisfaction that $125,000 was the minimum amount which Angelo should receive for his losses and hardships. *He reiterated this conclusion again and again,* from January through June 1954."

11-1-*Par.* 3-5

Here in 3 short paragraphs are presented details of Kopkind's perjury as stated to Grievance Committee on December 19, 1955.

11-2-*Full page*

This full page recites the blackmail and intimidation facts just as presented to the Grievance Committee in a complaint against Kopkind on December 19, 1955.

11-3-*Last Par., Sections* 1 & 3

"He (Kopkind) committed perjury on the witness stand to cover up his connection with one of the persons against whom he was supposed to be giving me protection.

He used blackmail to defeat my case against Marcus & Longbotham" (Above signed personally by Angelo and Barbara Chairamonte)

14-2-*Last Par., Lines* 7 & 8

"He (Kopkind) was really scared and at his wit's end, else he would not have committed perjury before Judge Roberts and thus tightened the knot around his neck."

15-3-*First 7 Lines*

"The best evidence of his (Kopkind's) original misconduct towards Angelo, his client, is the desperate effort he made on July 7, 1953 and in 1955 to prevent his conduct in 1951, 1952 and 1953 from being exposed.

Kopkind just had to stop the litigation put in progress against Eddie Marcus, Longbotham, and Dr. Donald Alderman. The evidence which would have to come out would expose to the public just what kind of a guy Kopkind really was. So he did not hesitate to utilize *perjury, blackmail and intimidation.* And I am wholly convinced he utilized some form of intimidation or blackmail to destroy the initiative of Angelo's attorney."

19-2-*Last* 3 *Lines*

"Kopkind committed perjury in open court under oath, used intimidation and blackmail to defeat Angelo's attempt at law to obtain redress. And while doing these crimes Kopkind was serving as CITY ATTORNEY in New Haven, and posing as a saint."

22-3-*Last* 4 *Lines*

"Bernie Kopkind came out of his hiding long enough to commit perjury in open court, to commit blackmail and intimidation, just enough to defeat Angelo's efforts, and to save the crooked Marcus. Then Bernie Kopkind crawled back into his self righteous shell."

GUILTY COUNT 17 — FINDING 44 (Ex. D, p. 28, or Ex. K)

13. THE ALDERMANS (SYDNEY & RALPH) WOULD KILL YOU.

1-4-*Par.* 3 5-3-*Line* 1 3-3-*Par.* 2 15-1-*Par.* 2

This alleged libel is identical with alleged libel #3 to which reference is made for excerpts from the above 4 citations contained in 3 of the not guilty counts. A reading of the entire paragraph 2 in count #15 reveals that it was the Kopkind-Alderman Brothers vice underworld administration in which the fear of death was so deeply ingrained. Common knowledge confirms the necessity of organized vice to make provision for strong arm men to enforce discipline and obedience even to the extent of death, if need be.

14. THEY (THE ALDERMANS) ARE THE VICE LORDS OF NEW HAVEN

6-1-*Last Par.* 14-4-*Line* 8 15-1-*Par.* 2, *Line* 20
18-4-*Line* 15 18-2*S*-*Line* 9 22-3-*Last Par., Line* 1
22-4-*Par.* 3

For quotations from the above citations see alleged LIBEL 6 above, which is practically identical to this one.

15. KOPKIND AND THE ALDERMANS ARE CONTAMINATING INFLUENCES.

If there is any person in these United States who could or would question the truth of this alleged LIBEL after reading what the jury found in the preceding pages as to alleged LIBELS Nos. 3 to 14, he is a candidate for psychiatric treatment.

16. DAN POUZZNER WHILE CITY ATTORNEY TOOK MONEY FROM GAMBLING PLACES.

14-2-*Par.* 2

Daniel Pouzzner "received a share of Kopkind's earnings for his services to the UNDERWORLD CZARS of New Haven. This continued for many years right up to July 1953, when Kopkind and Charlie Flynn took their departure, left the Pouzzner outfit, and took other quarters of their own." — The following is from Par. 3, same page: "he (Kopkind) was already putting into the pot a much larger income than any of the rest of the 7 lawyers, because of his heavy earnings from the Alderman brothers."

15-1-*Par.* 3

"most of his (Kopkind) mal-practice against Angelo Chairamonte occurred under the Pouzzner firm name. It was the Pouzzner firm that betrayed Angelo, its client ,who deceived him, who took his blast case and deliberately let the statute run against it, who told him to repair the damage of $1000 and then skinned him out of that as well as some $10,000 of improvements which the Pouzzner firm encouraged him to make in reliance upon the repeated assurances of attorney Edward L. Marcus that he would refinance the two houses as soon as the specified and carefully supervised improvements were made. It was the Pouzzner firm that colluded with Marcus to play Angelo for a sucker and betrayed him right in to the hands of that good looking young lawyer."

15-2-*Par.* 2

For 24 years from 1929 to about July 1, 1953 Dan Pouzzner and "every member of this firm got his proportionate share of Kopkind's criminal loot, which is all you can call his fees for doing both head work and some leg work in *setting up a perfectly organized vice ring.*"

15-2*S*-*Last Par.*

"It is interesting to notice that Pouzzner held the office of assistant City Attorney for about 6 years from 1925 to 1930, and then for the 2 years of 1931 & 1932 was city attorney."

15-2-*Par.* 3

Under heading of "Calamity Befalls the Pouzzner Firm" is stated: "Who should get caught but Dan Pouzzner himself, the head of the firm. Back in 1937 * * 8 years after the youthful Kopkind got started on his underground work, Dan was tripped up BY THE GRIEVANCE COMMITTEE, no less." and given "2 years of disbarment * * but by some hook or crook he beat the rap by one year and got reinstated within one year. That was a body blow to a firm that pretended to be so grand."

15-2-*Last Par.*

"Kopkind should have been disbarred long before Pouzzner was, but Kopkind was too slick to get caught. He must have had to pay some large sums occasionally to keep his misdeeds under cover, * * So Pouzzner is the really black sheep of that firm, but he couldn't be blacker than Kopkind."

A 29

#4952

SUPREME COURT OF ERRORS

State of Connecticut v. *Loring J. Whiteside*

November 27, 1964

MOTION FOR REARGUMENT

The defendant in the above entitled case, who filed a petition for a writ of error coram nobis or review in equity on October 27, 1964, which was denied on November 19, 1964, without comment, respectfully moves this Court for a reargument, under Section 703 of the Practice Book, upon grounds set forth in the following paragraphs:

1. Neither the *facts* nor the *law* set forth in the affidavit of said petition have been denied or even questioned by the State. Section 690 of the Practice Book afforded the State one week within which to dispute the *facts*, and Section 688 allowed it 2 weeks to dispute the *law*. It did neither, which left nothing for referral to a State referee as Section 699 of the Practice Book permits in those cases where an issue of fact is raised.

2. It is, therefore, self evident that the opinion in *State* vs. *Whiteside* 148 Conn. 208, was based upon 3 mistakes of fact which caused this Court, as then constituted, to render a decision gravely unjust to the defendant, and actually libelous as to him, in that it attributed to him as false and defamatory a vast number of statements which the jury had found to be non-libelous over and over again in the 19 not guilty counts; and thereby the Court deprived the defendant of his Federal and State constitutional *rights to trial by jury*, and the benefits to be derived therefrom, as required by Article VI of the Amendments to the U.S. Constitution, and substituted therefor the findings of a mistaken and deluded court.

3. Another Federal and State constitutional point calling for reargument is the failure of this Court and the trial court to afford the defendant the *equal protection of the laws* in the failure to grant him a stay of execution pending exhaustion of state remedies and subjecting him to premature imprisonment involving even one extra day

beyond the term fixed by the trial judge, coercing him into payment of a $500. fine prematurely and subjecting him to probation restraints prematurely, all protested vigorously, and for the ulterior motive of attempting to render his contentions moot so as to throw his whole appellate case out of court and deprive him of the exhaustion of State remedies.

4. Just as the negro in some states and certain parts of the country are methodically and invariably deprived of their Federal and State constitutional rights to *due process of law* and *equal protection of the laws*, just because he is a negro, so also in this State, it is becoming more and more apparent that the defendant by reason of his accurate reporting of the criminal acts of leading lawyers who organized and control the vice underworld of this State, has incurred the displeasure and animosity of every judge and prosecutor who has touched his case from the lowest to the highest, and is reckoned even more dangerous to the supremacy of vice control, than the negro is to white supremacy. This may be verified by the jury verdict of *not guilty* as to the contents of 19 newspapers and quotations therefrom appearing in EXHIBIT A attached to the petition just denied by this Court. Among the numerous instances of underworld control of judicial process in this State are the following cited in said EXHIBIT A as follows:

Count 1 Page 3 Par. 2 & 4 (A-13)
Count 2 Page 1 Par. 3 (A-13)
Count 4 Page 4 Par. 2 (A-13)
Count 4 Page 4 Par. 2 (A-14)
Count 8 Page 4 Par. 2 last 6 lines (A-14)
Count 14 Page 4 Lines 8 & 20 (A-11)
Count 19 Page 4 Par. 3, line 14 (A-14)
Count 23 Page 4 Line 26 (A-7)

5. Denial of any relief by this Court, without any explanation or justification therefor, from its own judicial acts which have wronged the defendant in so many ways because of obvious mistakes spread out in its opinion of 148 Conn. 208, raises a *new Federal and State constitu-*

Note: A-7 is on page A 17 in this appendix, A-11 is A 21, A-13 is A 23 and A-14 is A 24.

tional point not so blatantly perceptible until after the denial of November 19 was announced. Such unexplained and unsupported action points unerringly to the conclusion that the mistakes were *intentional* instead of accidental, and places the Court in the very uncomfortable position of intending a false and malicious basis and background for its decision of April 4, 1961, participated in by each and every one of the 5 Justices then constituting this Court; thus signifying that all 5 members of the Court at that time were *prejudiced* against the defendant for doing his duty as a law abiding citizen in attacking and publicizing highly placed lawyers and judges in this state who participated in the active management or protection of the organized underworld in Connecticut. To find himself in the hands of a *prejudiced Court* in April 1961 and again in November 1964, serves to deprive the defendant of *due process of law* under the 5th and 14th amendment to the Federal Constitution.

6. The 5th amendment to the Federal Constitution forbids *double jeopardy* for the same offence. But when the jury finds from 4 to 11 times that there is *no offence*, there should be no jeopardy at all. In order to uphold the conviction on Count 12, as set forth in paragraph 2 on page 214 of its opinion in 148 Conn., this Court had to rely upon all 3 of the mistakes of fact enumerated in the petition for coram nobis, had to reject the jury verdict on about 10 not guilty counts and then dispense with due process of law by contending:

(a) THAT THE State had provided a sufficiency of evidence to warrant a conviction on count 12, when it had provided none whatsoever.

(b) That the defendant had not questioned the sufficiency of the evidence, when he had done so upon 3 different occasions in a very forcible way.

(c) That the count 12 statement was defamatory despite the jury finding that it was *not defamatory* in 10 other not guilty counts.

Documentary proof that the jury found nothing libelous in all 23 counts is provided in the 14 pages of EXHIBIT A. The total failure of the State to prove anything libelous

in all 23 counts is amply proved in paragraphs 6 to 12 of the petition. The defendant has found no case in any state or federal court which would permit him to be found guilty under such circumstances. All cases thus far discovered declare that any guilty judgment or sentence under the circumstances of this case is null and void. The *mistakes of fact* in both trial and appellate courts compel both judgment and sentence in this case to be vacated as null and void. Reargument thus becomes a necessity if there is any desire to accomplish justice in the state courts on this vice underworld adventure.

Wherefore, the defendant prays that this Court will see fit to grant his motion for reargument.

(Filed November 27, 1964) Loring J. Whiteside
(December 15, 1964, Denied Defendant, pro se
By The Court, King, C.J.)

#4952 (4144)

COURT OF COMMON PLEAS

NEW HAVEN COUNTY

State of Connecticut v. *Loring J. Whiteside*

April 18, 1963

MOTION FOR STAY OF EXECUTION

WHEREAS on March 28, 1959 this Court sentenced the defendant to 20 days in jail, a fine of $500 and 2 years probation on 4 counts of criminal libel, later affirmed by the Supreme Court of Errors; &

WHEREAS the Supreme Court of Errors granted a stay of execution to enable defendant to apply for certiorari to the U.S. Supreme Court which declined to pick up the case for a decision on the merits; and

WHEREAS the U.S. District Court granted a stay of execution to enable defendant to petition for a writ of habeas corpus which was denied at the State's request on the ground that he had not yet exhausted his State remedies, and granted a further stay so that this denial could

be referred to the U.S. Court of Appeals, and if need be to the U.S. Supreme Court; and

WHEREAS Judge Robert P. Anderson indicated from the bench that he was inclined to believe that one of the federal constitutional questions raised by the defendant is valid but he is not free to pass on it until after it is acted upon by the State Courts, and the U.S. Court of Appeals for 2nd Circuit affirmed this decision, and apparently the U.S. Supreme Court felt likewise when on April 15, 1963 they again denied certiorari, thus leaving undecided any of the constitutional points raised by the defendant; and

WHEREAS it would be grossly unfair to defendant and he would sustain irreparable injury if compelled to serve said sentence of 20 days imprisonment without the opportunity of having the State courts pass upon the alleged violation of the constitutional rights asserted by him; and

WHEREAS defendant has applied for a writ of habeas corpus under Statute 52-466 to the Superior Court of Fairfield County assigning the violation of 5 State and Federal constitutional rights, which is now set for a hearing at 10 o'clock in the forenoon on Thursday, April 25, 1963; now

THEREFORE, the defendant respectfully requests this court for an early stay of execution to continue pending the decision of the State Superior Court and the State Supreme Court of Errors in the event both decisions are needed to establish the exhaustion of State remedies on the constitutional points involved.

(Filed Apr. 18, 1963)
(No action ever taken either to grant or deny)

Loring J. Whiteside,
defendant, Pro se

Excerpts from the Printed Record in original appeal #4952 selected from the Finding of the State Trial Judge

Page 71:

260. The Court. The sheriff has brought me two questions from the jury. The first question reads: "Does not the State have the responsibility of placing witnesses on the stand to prove the innocence of the alleged persons against the libeled charges?"

261. The Court. Now, the first question, in so far as the responsibility of the State, you mention in there the question of proof. Now, if you would like to have me, I would again read to you my instructions in regard to truth.

262. A Juror. Please do.

263. The Court. I'll do that, but I might say to you first, that the burden of proof, on proving the truth, is on the defendant. This proof must be by a fair preponderance of the evidence.

264. Now, after the accused has offered evidence to prove his charge — that the charge was true, or some part in one count was true, the State would be permitted to meet this with proof tending to show that the charge was false. But the State has no responsibility in the sense that it must introduce evidence; it may rely on the fact that it was not proven and hence has no responsibility to meet the charge.

265. Does that answer your question?

Page 18: FINDING.

First: Upon the trial of this case to the jury the State offered evidence to prove and claimed that it had proved the following facts: *********

Page 20:

12. In the first count of the information the charge of criminal libel is based on the issue of May 21, 1958, Exhibit A-1 wherein Spencer Hoyt was charged with having lied to Judge Shanley and was charged with having

sold out five creditors while administrator of an estate; that Hoyt and Judge Shanley were guilty of treachery and deception; that they conspired to have the defendant fired; that Bernard Kopkind had commited perjury, withheld valuable information from his client, committed blackmail and failed to account to his client; that Charles Flynn told Judge Shanley a lie in open court; that Sidney and Ralph Alderman paid Kopkind "to build an organ to kill rebellious souls."

Page 21:

13. That said matter which was published in said newspaper by the defendant of and concerning Spencer Hoyt, Charles L. Flynn, Bernard Kopkind, James A. Shanley, Sidney and Ralph Alderman was false and malicious.

(NOTE — In like manner the trial judge proceeded through each of the other 22 counts of the information, declaring that the matter published in each newspaper of every count, the 19 *not guilty* counts as well as the 4 *guilty* counts, was false and malicious. See Printed Record pages 21-31, findings 14-57, and also the 23 introductory sheets printed in red, contained in EXHIBIT K, described below.)

Page 91:

Sixth: All exhibits A-1 through A-23 which contain the alleged libelous statements are made a part of this finding but need not be printed. All other Exhibits are made a part of the record and need not be printed.
Filed Jan. 5, 1960

Wall, J.

(NOTE — Fac-simile copies of Exhibits A-1 through A-23 are bound in plastic cover, labeled "EXHIBIT K", 9 copies of which are being loaned to the Court as an integral part of the trial judge's finding and a very important part of the record. An introductory sheet, printed in red, serves to introduce each of the 23 newspapers; indicates the alleged libelees named in each count; the jury verdict on each count; and the trial judge's findings on each count as contained in the printed record.)

State of Connecticut v. Loring Whiteside

Baldwin, C. J., King, Murphy, Mellitz and Shea, Js.

The statutory offense of criminal libel consists of the publication of defamatory matter. That, itself, constitutes the crime, and prima facie proof of malice is not ordinarily required. But if the publication was made in circumstances which the law recognizes as an occasion of privilege, the implication of malice which the law draws from the publication is rebutted and the state has the burden of proving that the occasion was abused and the defendant was in fact activated by malice. The state need not set forth the circumstances showing whether the occasion was one of privilege. That burden is on the accused. *Held* that the lack of an allegation of malice did not render the present information defective, since the facts showing the occasion to be privileged did not appear in the information.

Malice in fact is sufficiently shown by proof that the publication was made with improper and unjustifiable motives. The state is not confined, in its proof of this, to evidence extrinsic to the contents of the publication. *Held*:

1. The publications in the present case contained such scurrilous, abusive and offensive matter that, in the absence of evidence of truth or other evidence of good faith, the jury could find malice from the contents of the publications alone.
2. Evidence of malice could also be found in the defendant's deliberate repetition of the statements in the various issues of his paper.

The gravamen of the offense under the statute is that the publication affects injuriously the peace and good order of society. The offense is, nevertheless, complete when the accused has done the thing set forth in the statute. The state is not required to prove that a disturbance of the public peace actually resulted.

Each count of the information was devoted to a separate issue of the defendant's paper, and each one charged a separate offense. The fact that the jury found the defendant not guilty on counts reciting defamatory matter similar to that charged in count 12 and concerning the same persons did not prevent conviction under count 12 as long as the evidence warranted conviction under that count.

Section 7 of article first of the state constitution provides that in prosecutions for libel the jury may determine the law and the facts under the direction of the court. The object of this is

to put libel cases on the same footing as other criminal prosecutions and give the jury the right to return a general verdict of guilty or not guilty as in other criminal cases. The constitution has not curtailed the right of the court to determine the law to be applied by the jury in the rendition of a general verdict. *Held* that the court did not err in its instructions concerning the duty of the jury to accept the law as explained by the court.

The defendant was entitled to have the ground on which the state objected to the admission of certain evidence stated. To avail himself of the right, however, he should have indicated the ground on which he claimed admissibility. As no ground of objection or admissibility was stated at the trial, error could not be predicated on the exclusion of the evidence. Furthermore, the ruling was harmless, since the evidence related to a count on which the defendant was found not guilty.

Evidence to prove the truth of alleged defamatory statements must come from witnesses who have knowledge of the facts. The defendant's testimony as to the sources from which his informant obtained his material was objectionable as hearsay and properly excluded.

Argued January 5—decided March 21, 1961

Information charging the defendant with the crime of libel, brought to the Court of Common Pleas in New Haven County and tried to the jury before *Wall, J.;* verdict and judgment of guilty and appeal by the defendant. *No error.*

The defendant filed a motion for reargument which was denied.

B. Fred Damiani, for the appellant (defendant).

George R. Tiernan, prosecuting attorney, for the appellee (state).

MELLITZ, J. The defendant was charged, in an information containing twenty-three counts, with having published a series of libels in violation of

what is now General Statutes § 53-174.[1] Upon the trial to the jury, he was found guilty on four counts, and he has taken this appeal. His principal claims are that the information was fatally defective in that it lacked an allegation of malice; that the state failed to introduce evidence of actual malice in the publication of the alleged libels; that the state failed to prove that a breach of the peace resulted from the publication of the libels; and that a finding of guilt on count 12 could not be sustained when the defendant was found not guilty on other counts in which he was charged with publishing the same or similar statements. Error is assigned also in the charge, in the finding, and in rulings on evidence.

The alleged libels were published in a small weekly paper, "the grapevine press," printed, published and distributed by the defendant. Each of the twenty-three issues from May 21, 1958, through October 22, 1958, was made the basis of a separate count in the information. In each count, the defendant was accused of publishing, in a designated issue of the paper, a libel concerning certain named persons, in violation of what is now § 53-174. The information was in the short form authorized by Practice Book § 344. This section provides that an offense may be charged by using the name given to it by the common law or by a statute, or by stating so much of the definition of the offense as is sufficient to give the court and the accused notice of what offense is intended to be charged. Practice Book § 350 provides that an indictment or informa-

[1] "Sec. 53-174. BREACH OF THE PEACE. INTIMIDATION. LIBEL. Any person who disturbs or breaks the peace . . . or writes or prints and publicly exhibits or distributes . . . any offensive, indecent or abusive matter concerning any person, shall be fined . . . or imprisoned . . . or both."

tion need not allege that the offense was committed or the act done "maliciously," unless such characterization is necessary to charge the offense under § 344. The practice authorized by § 344 has been held to be constitutional. *State* v. *Davis*, 141 Conn. 319, 321, 106 A.2d 159. The claim of the defendant is that the alleged libels were published on occasions of privilege and therefore that an allegation of malice was essential to charge the offense under § 344; and further, that proof that the publications were made maliciously was required to sustain a conviction.

At common law, malice constitutes the essence of the offense of criminal libel and, in a prosecution, is a necessary allegation and an element in the proof. The malice referred to is merely the malice which the law implies from the publication of defamatory matter and means no more than the intent to publish it. The malice is presumed from the publication, and the presumption stands as proof. *State* v. *Pope*, 90 Conn. 98, 106, 96 A. 313. Under the statute upon which the prosecution here is based, the offense consists of the publication of the defamatory matter. That, itself, constitutes the crime, and prima facie proof of malice is not required. Id. The situation changes, however, when it is shown that the publication was made in circumstances which the law recognizes as an occasion of privilege. *Flanagan* v. *McLane*, 87 Conn. 220, 222, 87 A. 727; *Atwater* v. *Morning News Co.*, 67 Conn. 504, 516, 34 A. 865. Such an occasion rebuts the implication of malice which the law draws from the publication of false and defamatory matter, and casts upon the state the burden of proving that the occasion had been abused and that the defendant was in fact actuated by malice toward the libelee. *State* v. *Pope*,

supra, 107. The state need not set forth the circumstances surrounding the publication, showing whether the occasion was one of privilege. That burden is on the accused. Id., 106.

The information here charged the defendant with publishing libels concerning certain named persons, but those persons were not otherwise described or identified. It is the defendant's contention that they were, in fact, attorneys at law and public officers and that the occasions of the publications were privileged. The facts showing the occasions to be privileged did not, as in the *Pape* case, appear from the contents of the information. It was therefore not essential that the information contain an allegation that the publications were maliciously made. Practice Book § 350. The burden was on the defendant to prove, by a fair preponderance of the evidence, his claim of privilege. *State* v. *Gardner,* 112 Conn. 121, 124, 151 A. 349; *State* v. *Pape,* supra, 106. If he sustained that burden, it became incumbent upon the state to prove that the privilege was abused and that in publishing the defamatory matter the defendant was, in fact, actuated by malice. Id., 107. The court so instructed the jury in its charge. The absence of an allegation of malice did not render the information defective.

The contention that the state introduced no evidence of malice and that there was no evidence before the jury from which malice could be found is equally without merit. Malice in fact is sufficiently shown by proof that the publications were made with improper and unjustifiable motives. *Corsello* v. *Emerson Bros., Inc.,* 106 Conn. 127, 132, 137 A. 390; *Hassett* v. *Carroll,* 85 Conn. 23, 37, 81 A. 1013; *Wynne* v. *Parsons,* 57 Conn. 73, 80, 17 A. 362; *Hotchkiss* v. *Porter,* 30 Conn. 414, 421; *Moore* v.

Stevenson, 27 Conn. 14 28. In its proof of malice, the state is not confined to evidence extrinsic to the contents of the publication itself. From the alleged libel, the jury may determine whether, on the face of it, there is evidence of malice. *Flanagan* v. *McLane*, supra, 222; *State* v. *Pape*, supra, 106. Here, the alleged libelous statements charged the named persons with a wide variety of unlawful and criminal acts, including fraud, perjury, blackmail, intimidation, concealment of crime, and control of organized gambling and prostitution; and further, that they would not hesitate to murder to prevent disclosure of their activities. The publications clearly disclosed such scurrilous, abusive and offensive matter that a jury plainly would be justified in concluding that the publications were made from improper and unjustifiable motives, in the absence of evidence of their truth or other evidence of good faith. Evidence of malice could be found also in the defendant's deliberate repetition of the statements in the various issues of his publication. *Ely* v. *Mason*, 87 Conn. 38, 45, 115 A. 479; *State* v. *Riggs*, 39 Conn. 498, 503. There was ample evidence before the jury to support a finding of malice.

Another contention of the defendant is that to support a conviction under the statute there must be proof of a breach of the peace. It is true that the offense here charged is spelled out in the same statute as the crime of breach of the peace, but it is a separate and distinct offense. The publishing of defamatory matter was made a statutory offense by chapter 86 of the Public Acts of 1865; Rev. 1866, p. 264, § 123; and the offense has been incorporated in the breach of the peace statute since 1875. Rev. 1875, p. 509, § 10; *State* v. *Pape*, supra, 101. At common law, the basis for a criminal prosecution

for the publication of a libel is its tendency to create a breach of the peace; it is immaterial that no one was incited to commit any act by reason of the libel. *State* v. *Avery*, 7 Conn. 266, 269. The gravamen of the offense under the statute is that the publication affects injuriously the peace and good order of society; *State* v. *Gardner*, supra; and the offense is complete when the accused has done the thing set forth in the statute, irrespective of whether any other act resulted from it. The court correctly ruled that it was not incumbent upon the state to prove that a disturbance of the public peace actually resulted from the publications.

The defendant contends that his conviction on count 12 is invalid and should be set aside because he was found not guilty on a number of counts in which he was charged with publishing, on other dates, defamatory matter similar to that charged in count 12 and concerning the same persons. Each count in the information charged a separate and distinct offense and was complete in itself. The only question is whether the evidence was sufficient to support a conviction on count 12, irrespective of the verdict on the other counts. Except as to the claim, already considered, that the state presented no evidence of malice, the defendant has not questioned the sufficiency of the evidence to warrant a conviction on count 12. There was no basis for the court to disturb the verdict on that count.

The defendant's objection to the inclusion of certain paragraphs in the finding involves a misconception of the nature of the finding in a jury trial. It is merely a narrative of the facts claimed to have been proved by each side, made for the purpose of fairly presenting any claimed errors in the charge or rulings of the court. *Szela* v. *Johnson Motor Lines*,

Inc., 145 Conn. 714, 719, 146 A.2d 910. If there is no evidence affording a reasonable basis for a claim of proof, the claim may be stricken out; *Schmeltz* v. *Tracy*, 119 Conn. 492, 494, 177 A. 520; but a correction will not be made merely to secure meticulous accuracy as to details in the claims of proof. *Daly Bros., Inc.* v. *Spallone*, 114 Conn. 236, 243, 158 A. 237; *Brown* v. *Goodwin*, 110 Conn. 217, 218, 147 A. 673. The finding here furnished a fair and adequate basis for testing the errors in law claimed to have been made by the court, and no corrections are warranted.

Error is assigned in the failure of the court to comply with numerous requests to charge and in various paragraphs of the charge as delivered. The substance of the requests, to the extent that they were correct and adapted to the issues, was incorporated in the charge. The court was not required to charge in the language of the requests. Of the paragraphs of the charge as delivered to which the defendant took exception, only one requires consideration. This has reference to the instruction given by the court with relation to article first, § 7, of the constitution of Connecticut, which provides: "In all prosecutions or indictments for libels, the truth may be given in evidence, and the jury shall have the right to determine the law and the facts, under the direction of the court." The defendant contends that in accordance with this provision the court should have charged that the jury were, under the court's direction, the judges of the law as well as of the facts. After giving the jury proper instructions as to the duty of the court to explain the law and the duty of the jury to decide the facts and to accept the law as explained by the court, the court read the text of the constitutional provision and

then informed the jury that the instructions given with respect to whether the matters published were defamatory or not were only advisory. This instruction was, if anything, more favorable to the defendant than he was entitled to, although ample authority supports the view adopted by the court. *Harrington* v. *Butte Miner Co.*, 48 Mont. 550, 139 P. 451 & note, 38 Am. & Eng. Ann. Cas. 1261, 1271. The object of the constitutional provision was to put libel cases on the same footing as other criminal prosecutions; *Gray* v. *Mossman*, 91 Conn. 430, 443, 99 A. 1062; 2 Cooley, Constitutional Limitations (8th Ed.) p. 955; and to give the jury the right to return a general verdict of guilty or not guilty, as in other criminal cases. 2 Wharton, Criminal Law and Procedure § 889; *Oakes* v. *State*, 98 Miss. 80, 86, 54 So. 79. It does not have the effect of relieving the jury of the duty of accepting and applying to the facts the law as given by the court. 2 Wharton, loc. cit. Practically the identical question was presented in *State* v. *Gannon*, 75 Conn. 206, 52 A. 727, where the statute then in force regarding the respective functions of court and jury in criminal cases was under consideration. The statute provided that the court should submit to the jury's consideration both the law and the facts. Earlier cases, to the extent that they could be regarded as assuming that the jury could lawfully disregard the law as stated by the court, were expressly overruled (p. 235), and it was held (p. 221) that in no sense did the statute authorize an independent determination by the jury of what the law was. An instruction permitting the jury to determine the law was held (p. 234) to be erroneous. The constitutional provision here involved has not curtailed the right of the court to

determine the law to be applied by the jury in the rendition of a general verdict in a prosecution for libel.

Finally, error is assigned in a number of rulings on evidence. During the examination of a witness by the defendant, the state objected to a question but assigned no ground. The court sustained the objection and refused the defendant's request to have the ground of objection stated. Under the provisions of Practice Book § 155, whenever an objection to the admission of evidence is made, the grounds upon which the evidence is claimed or upon which the objection is made are required to be stated. The defendant was entitled to have the ground of the objection stated. To avail himself of the rule, however, he was required to state the ground for his claim of admissibility. He neglected to do so, and since he failed to comply with the rule, and no ground of objection was given, the exclusion of the evidence cannot be held to constitute reversible error. *Casalo* v. *Claro,* 147 Conn. 625, 630, 165 A.2d 153. Furthermore, the ruling related to a count on which the defendant was found not guilty, and the defendant could not have been harmed by the ruling. In another assignment, the defendant complains of the exclusion of testimony he sought to give as to the origin of certain statements he had published. He was allowed to testify concerning his source of information but not concerning the source from which his informant had acquired the material. Such evidence would clearly be objectionable as hearsay and was properly excluded. Evidence to prove truth must come from witnesses who have knowledge of the facts. 3 Underhill, Criminal Evidence (5th Ed.) § 697. A number of other rulings on evidence which were

assigned as error were clearly correct and do not require discussion.

There is no error.

In this opinion BALDWIN, C. J., KING and SHEA, Js., concurred; MURPHY, J., concurred in the result.